

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

DEBRA MCLEOD, *et al.*,

Defendants.

Case No. 2:11-CR-421-KJD-PAL

ORDER

Presently before the Court is Plaintiff's Motion to Strike (#89). Defendant Debra McLeod ("Defendant") filed a response in opposition (#91).

I. Background

On March 20, 2013, the Court ordered (#78) an extension of time permitting Defendant Debra McLeod to file a supplemental motion past the already expired deadline. The Court ordered that the supplemental motion be filed no later than March 25, 2013. Additionally, the Court ordered that objections to the report and recommendation of the magistrate judge, entered on March 18, 2013, be filed no later than March 25, 2013. The Government's responses were to be filed no later than seven (7) days thereafter.

Defendant Debra McLeod filed her objections and supplemental motion on March 25, 2013. Then on Friday, March 29, 2013 at 4:10 p.m. and Saturday, March 30, 2013 at 6:08 p.m., Defendant

1 Alison McLeod filed two supplements (#85/86) to the motions. Defendant Debra McLeod also filed
2 a supplement (#87) to her motion for a Franks hearing on March 30, 2013 at 6:30 p.m. The
3 Government's response to the motion and to the objections was due on Monday, April 1, 2013.

4 The Government filed its responses on April 1, 2013. It also filed the present motion to strike
5 the supplements as untimely.

6 II. Analysis

7 Federal Rule of Criminal Procedure ("Rule") 47(c) requires that supporting affidavits must be
8 filed with the motion. Rule 45(b)(1)(B) allows the court to extend time upon a party's motion, if
9 made after expiration of the allowed time, if the party failed to act because of excusable neglect.

10 Defendant Debra McLeod's response argues that the neglect was excusable:

11 "Here, the Government was not prejudiced by the untimely filing of the
12 supplemental affidavits. The affidavits were filed at least two days in
13 advance of the deadline for its responses. Further, the information contained
14 in the affidavits asserted no new legal arguments or factual assertions, but
rather only served as additional foundations for the factual assertions and
legal arguments already timely filed. Affidavits attesting to the same factual
assertions were timely filed March 25, 2013."

15 Defendant has not stated a case for excusable neglect. First, Defendant's assertion that no prejudice
16 befell the Government, because the affidavits were filed "at least two days in advance" of the
17 deadline for the Government to respond is disingenuous. Though they preceded the Government's
18 deadline by two days, they were at least four days late on a time-intensive briefing schedule.
19 Furthermore, and more prejudicial to the Government, two of the supporting affidavits were filed on
20 the Saturday preceding the Government's Monday deadline, effectively shortening the response time
21 to one day at best. As Defendant points out, the discovery regarding the Forward Looking Infrared
22 Radar ("FLIR") had been available to them since February 8, 2013.

23 The Court finds that the supplemental affidavits are prejudicial because their late filing
24 prevented the Government from adequately responding to the facts contained in them. Filing them
25 untimely, late in the afternoon on Friday and Saturday before the Monday response time was not the
26 result of excusable neglect.

1 Finally, Defendant's contention that the late provided affidavits are not prejudicial because
2 they contain no new legal arguments or facts, undermines their argument. Defendant asserts that
3 timely affidavits attesting to the same factual assertions were filed with the supplemental motion and
4 objections on March 25 ,2013. Thus, Defendant does not even argue that the affidavits are necessary,
5 but are cumulative to the affidavits already timely filed with the motions. The Court also notes that
6 Defendant Alison McLeod filed no response to the Government's motion to strike. Therefore, the
7 motion to strike is granted.

8 III. Conclusion

9 Accordingly, IT IS HEREBY ORDERED that Plaintiff's Motion to Strike (#89) is
10 **GRANTED;**

11 IT IS FURTHER ORDERED that the Clerk of the Court **STRIKE** the Supplements
12 (#85/86/87).

13 DATED this 8th day of April 2013.

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17 Kent J. Dawson
18 United States District Judge
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